

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

v.

07 Cr. 543 (CLB)

YEHEZKEL ELIA and DAVID ELYAHO,

NOTICE

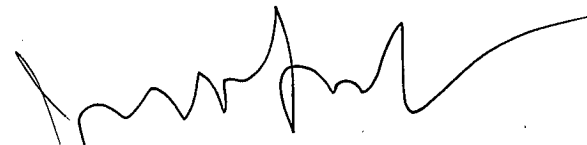
Defendants.

-----X

Defendant Yehezkel Elia respectfully joins in the pretrial motions made by co-defendant, David Elyaho, to the extent such motions are applicable to him. Specifically, defendant Yehezkel Elia joins in Elyaho's motion to dismiss count 1 of the indictment due to a defect in said count under Federal Rule of Criminal Procedure 12(b)(3)(B). That defect is improper duplicity. Defendant Yehezkel Elia also joins in the motion for early discovery based on the reasons set forth therein.

An indictment which alleges more than one conspiracy in a single count is duplicitous. As that is the case here, count one should be dismissed in that it is defective pursuant to Rule 12(b)(3)(B). The Second Circuit has held that acts that could be charged as separate counts of an indictment may instead be charged in a single count if those acts could be characterized as part of a single continuing scheme. *United States v. Margiotta*, 646 F.2d 729, 733 (2d Cir. 1981). However, in the present case, count one of the indictment alleges activity that goes well beyond a single continuing scheme.

Dated: White Plains, New York
January 24, 2008



Jared J. Scharf
1025 Westchester Avenue
White Plains, New York 10604
(914) 682-9777

Attorneys for Defendant
Yehezkel Elia

TO: Cynthia K. Dunne
Assistant United States Attorney
Southern District of New York
300 Quarropas Street
White Plains, New York 10601

Joseph A. Vita, Esq.
327 Irving Avenue
Port Chester, New York 10573